

DECISION



18844 Hasfurth
PLM
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-203573

DATE: July 17, 1981

MATTER OF: Bend Heating and Sheet Metal, Inc.

DIGEST:

1. Bid received after bid opening is late and not for consideration, notwithstanding possibly misleading contracting officer advice, because late bid clause provided contrary advice, the invitation provided that oral instruction by Government prior to award was not binding, and bidder is responsible for timely delivery of bid.
2. Even if bidder's timely telegraphic "revised bid" reducing bid price can be considered as separate bid, and formal bid is received after bid opening, "revised bid" is late and not for consideration since invitation prohibited telegraphic bids.

Bend Heating and Sheet Metal, Inc. (Bend), protests the award to another firm of a contract under Forest Service invitation for bids (IFB) No. PNW-81-8. Bend contends that its low bid should not have been rejected as late.

We deny the protest.

Bend alleges that the contracting officer advised, prior to the April 21, 1981, bid opening date, that if Bend mailed its bid by certified mail before 12 noon on April 20, the bid would be accepted. After so mailing its bid and receiving a lower quote from a proposed subcontractor, Bend, by a telegraphic "revised bid," reduced its price.

[Protest of Bid Rejection for Lateness]

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Although the Bend telegram was received by the agency before bid opening, the Bend bid arrived 2 days after bid opening. Citing the late bid clause of the IFB's instructions to bidders (standard form 22), the contracting officer rejected the Bend bid as late; although the bid was sent by certified mail, it was not mailed by the fifth calendar day prior to bid opening so as to excuse the late receipt. The contracting officer determined that Bend's timely telegram was not for consideration since it modified a late bid.

Bend states that the late bid should be considered because the contracting officer erroneously advised that its bid would be accepted if mailed by April 20 by certified mail. Otherwise, the firm would have timely delivered the bid by hand. Also, Bend states that its telegram constituted a revised bid, not a bid modification.

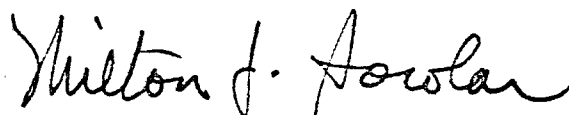
The contracting officer's late bid determination states that Bend was advised "to be sure that it [the Bend bid] was certified and date stamped if sent by mail [on April 20] * * *." This may have misled Bend into believing that following those instructions afforded Bend protection under the late bid clause. However, even assuming Bend's allegation, the IFB's late bid clause clearly provided to the contrary. Moreover, the instructions to bidders provided that oral instructions given before the award of a contract were not binding on the Government. Further, we have often held that it is the bidder's responsibility to timely deliver its bid. Federal Contracting Corp., et al., 54 Comp. Gen. 304 (1974), 74-2 CPD 229; Briggs Engineering and Testing Co., Inc., B-192943, October 3, 1978, 78-2 CPD 256.

Bend's other contention is that the telegram was a revised bid (rather than a bid modification) which could be considered alone. Even if the telegram was a separate bid, the instructions to bidders prohibited the submission of telegraphic bids. In these circumstances, we have upheld an agency's rejection of timely telegraphic bids, where, as here, a formal bid was received late. See Surgical Instrument Company of America, B-199513, August 4, 1980, 80-2 CPD 85.

In any event, Bend's telegraphic "revised bid" ends with the following language which is inconsistent with Bend's allegation:

"BID EN ROUTE CERTIFIED MAIL."

Accordingly, the protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States